

APPENDIX

Excerpt From 68 Cong. Rec. 3181-2 (Feb. 7, 1927),
69th Cong., 2d Sess.:

Mr. GRAHAM. Mr. Speaker, I ask unanimous consent to insert in the RECORD a comment upon the question of the constitutionality of this transfer. That question has been raised under a decision of the Supreme Court January 3, 1927, and these remarks would clearly, I think, establish the constitutionality of the act.

The SPEAKER. The gentleman from Pennsylvania asks unanimous consent to extend his remarks in the RECORD by publishing a statement upon the constitutionality of the act. Is there objection?

Mr. LaGUARDIA. May we have the remarks placed in the RECORD at this point?

The SPEAKER. The gentleman from New York asks unanimous consent that the remarks be placed in the RECORD at this point. Is there objection?

There was no objection.

The statement is as follows:

Congress exercises the function of creating courts under several different grants of power. It is expressly given the power of creating inferior courts to the Supreme Court of the United States in the administration of Federal justice under the grant of Article III of the Constitution. These courts exercise jurisdiction within the borders of each State in all cases described in the third article as judicial power extended by that article to the United States. Congress may create courts to exercise complete jurisdiction over the District of Columbia, as given it by reason of the exclusive governmental jurisdiction that it has over the District vested expressly by the Constitution. Congress may in the same way create courts to exercise complete and exclusive judicial jurisdiction over the Territories of the United States under that provision of the Constitution which gives Congress the right to impose needful regulations over the territory and property of the United States. This latter power is also said by Chief Justice Marshall and others to grow out of the power of the United States

as a sovereign to govern the territory which it owns, not in the States. In the same way it may be properly said that were there no third article to the Constitution, the United States as a sovereign Government could create courts to decide cases arising between the Government and such individuals in reference to its own taxes, its own grants, and in reference to its own debts. In other words, I conceive that without the special grant of power under the third article of the Constitution Congress could exercise the power of a sovereign, create a court of claims to pass on the debts which the United States may owe to individuals, on grants of lands which it may have granted to individuals, to grants of patent rights which it may have granted to individuals, and the construction and decision of cases arising under the customs or internal revenue laws affecting the payment of the revenue which a sovereign must collect in order that it may live. With reference to these latter courts, it may be said that the same rigid rule would not be applied to the functions which Congress may give to them as to whether they shall be purely judicial or not, as has been applied in respect to courts that exercise a Federal jurisdiction under the third article of the judicial power of the United States, as distinguished from the general administration of justice by the States within State borders, which could not exist but for the third article. In this way the Court of Claims, the Court of Customs Appeals, and a court of patents may be easily distinguished from the Supreme Court and its subordinate courts under the third article in respect to limitation to strictly judicial functions.

The Supreme Court and the subordinate courts of the United States, exercising jurisdiction within the several States of the Union, all deal with cases and controversies in the sense of the third article of the Constitution, but as to courts which are not concerned with the exercise of judicial power within or affecting the several States, there is reason to believe that they stand on a different plane, and that as they are brought into being and exist in virtue of the sovereignty of the United States, and of its power to do all that is essential to the effective exercise of a government, such as aiding in the enforcement of the taxation

laws, aiding in the administration and enforcement of the public land laws and the Indian laws, and in the ascertainment and determination of claims against the United States and the administration of the laws relating to the granting of patents, copyrights, and trade-marks, they may be invested with jurisdiction and powers which lie outside of and beyond the controversies and cases which are comprehended by the third article of the Constitution. Illustrations of this will be found in the court of private-land claims, which for many years ascertained and reported the facts respecting conflicting claims to lands, jurisdiction over which was ceded to the United States by Mexico, to the special Indian court, which dealt with claims to citizenship of the Five Civilized Tribes in the Indian Territory when Congress was preparing that region for admission to the Union as a State, to the Court of Claims, and especially its power and authority to examine and report on claims, at the instance of either House of Congress or at the instance of any of the executive departments of the Government. In *Gordon v. United States* (117 U.S., Appendix 697, 699), Chief Justice Taney said:

"So far as the Court of Claims is concerned, we see no objection to the provisions of this law. Congress may undoubtedly establish tribunals with special powers to examine testimony and decide, in the first instance, upon the validity and justice of any claim for money against the United States, subject to the supervision and control of Congress or a head of any of the executive departments."

And while in that and other cases it is held that where the action of such a tribunal is intended to be advisory only, and in aid of legislative or administrative action, there can be no review by the Supreme Court, the cases all recognize that Congress, consistently with the Constitution, may establish special tribunals and clothe them with power to ascertain and decide facts and report them as a basis for legislative or administrative action, without putting them in the form of a controlling judicial judgment.

The case of the *Postum Cereal Co. v. California Fig-Nuts Co.*, decided January 3, 1927, following the case of *Keller v. The Potomac Electric Power Co.* (261 U.S. 428),

which in turn followed the case of *Baldwin v. Howard* (256 U.S. 35), and *Muskraat v. United States* (219 U.S. 346), were cases in which the jurisdiction of the Supreme Court of the United States was in question, and it was held that its power and jurisdiction as a court was limited to judicial cases and controversies and could not extend to mere decisions as by a commission or special tribunal created for the purpose of aiding governmental functions, whether legislative or administrative. But these cases would not apply to a Court of Customs and Patent Appeals, to whose jurisdiction Congress may properly add the duties of an administrative tribunal for governmental purposes.

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JAN 15 1962

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No. 481

In the Supreme Court of the United States

OCTOBER TERM, 1961

BENNY LURE, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

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